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TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues
First session
Geneva, 18 November 1996
Agenda item 8

DRAFT REPORT OF THE COMMISSION ON INVESTMENT, TECHNOLOGY AND RELATED FINANCIAL ISSUES ON ITS FIRST SESSION (18-22 November 1996)

Rapporteur: Mr. Atsuyuki Oike (Japan)

Speakers:

Secretary-General of UNCTAD	Japan
Chairperson	Zambia
Director, ITED	Cuba
Chief, Investment Branch	Mexico
Panama (for Latin American and Caribbean Group)	China
	Norway
Pakistan (for Asian Group and China)	Madagascar
Ireland (for European Union)	Venezuela
Morocco (for African Group)	Bangladesh
Russian Federation	Sri Lanka
Senegal	India

Note for Delegations

This draft report is a provisional text circulated for clearance by delegations.

Requests for amendments to statements of individual delegations - to be submitted in English or French - should be communicated by Friday, 29 November 1996 at the latest to:

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INTRODUCTION

1. The first session of the Commission on Investment, Technology and Related Financial Issues was held at the Palais des Nations,Geneva, from 18 to 22 November 1996. In the course of the session, the Commission held ... plenary meetings (1st to ... meetings) and ... informal meetings.

2. Also in the course of the session, two panel discussions were organized, the first on "Attracting FDI for development: lessons for LDCs", and the second on "Experiences of developing countries with the implementation of competition law and policy".

Opening statements

3. The **Secretary-General of UNCTAD** said that the Commission provided a forum in which all countries could discuss the investment issue, especially from a development angle, and had the facility to involve civil society at large. At the most recent session of the Trade and Development Board, a high-level segment (Global Investment Forum) had been devoted to the question of foreign direct investment in a globalizing economy, and a number of conclusions could be drawn from the discussions that had taken place. Firstly, all countries recognized FDI as an important issue, particularly in the development context; secondly, UNCTAD was regarded as a forum in which the whole range of issues relating to FDI could be discussed; and thirdly, UNCTAD had the capacity to prepare for such discussions substantively and organize them efficiently. The secretariat's research, analysis and organizational capacity would be at the disposal of the Commission for its future activities, and of course the secretariat remained entirely open to cooperation with other international organizations. Finally, the mandate of the Commission also included competition policy, technology and other financial flows, which opened up a number of possibilities for synergies.

4. The **Chairperson** said that, over the years, attitudes towards foreign investment had changed markedly, and FDI was now acclaimed as a powerful tool for development. Both developed and developing countries had liberalized their rules on foreign investment in order to attract more FDI, but there was still a diversity of national priorities and objectives as far as FDI was concerned, and the possibility of multilateralizing FDI rules should be examined. A related issue was competition policy, which could become a constraining factor as liberalization proceeded.

5. The **Director of the Division on Investment, Technology and Enterprise Development** pointed to the importance that UNCTAD attached to a better understanding of the role of FDI in the process of sustainable global

development. In this regard, she emphasized on the one hand the growing importance of transnational corporations in the world economy and the increasingly inextricable interlinkages between investment and trade that arose out of TNCs' global networks, and on the other the highly uneven distribution of FDI and the marginalization of the LDCs, especially in Africa, in this regard. Pushed by competitive pressures and pulled by the attractiveness of large markets, FDI mostly bypassed developing countries, rendering insufficient all of their efforts to improve the domestic FDI environment. Developing countries should focus on building attractiveness at home by such means as, for example, strengthening the local enterprise sector and the skill endowment of the work force.

Chapter I

DEVELOPMENTS IN INTERNATIONAL INVESTMENT: INTERACTION BETWEEN INVESTMENT AND TRADE AND ITS IMPACT ON DEVELOPMENT

(Agenda item 3)

6. For its consideration of this item, the Commission had before it the following documentation:

"Overview of the World Investment Report 1996: Investment, Trade and International Policy Arrangements";

"World Investment Report 1996" (background document);

"Experiences gained in technical cooperation with respect to 'best practices' in investment promotion: background document prepared by the UNCTAD secretariat" (TD/B/COM.2/Misc.1).

A. General statements

7. In his introductory remarks, the **Chief of the International Investment, Transnationals and Technology Branch of the Division on Investment, Technology and Enterprise Development** highlighted some salient points relating to the interrelationship between FDI and trade and the policy implications arising therefrom. While trade had grown rapidly, FDI had also grown rapidly since the early 1980s - in fact, more rapidly than trade and domestic production. Sales by foreign affiliates were now higher than exports. FDI was not only now more important than trade in linking markets internationally, it was also a mechanism to link the production systems of countries internationally. It involved the establishment of lasting relationships, increasingly within the framework of internationally integrated TNC systems that could serve as conduits of capital, technology, know-how and skills, as well as conduits of imports and exports. Estimates regarding the share of world trade undertaken by TNCs showed how closely FDI and trade were interrelated, underscoring the importance of questions related to that interrelationship and the answers to those questions in the context of a changing world economy.

8. The dynamics of the interrelationship between investment and trade had undergone a dramatic change in recent years. In the present globalizing world economy, manufacturing firms had more options than ever before in terms of choosing how to serve foreign markets and accessing resources. As a result, the issue was no longer whether trade led to FDI or FDI led to trade but how firms accessed resources and where they located their value-added activities; investment and trade flows were determined simultaneously by the locational decisions of TNCs.

9. This greater intertwining of FDI and trade called for coordinated policy approaches. The principal policy issues to be addressed included measures affecting the entry and operations of foreign investors; standards of treatment

as applied to TNCs, notably issues of national treatment, MFN treatment, and fair and equitable treatment; broader concerns relating to measures dealing with the proper functioning of the market, including such issues as RBPs; and investment protection and the settlement of disputes.

10. The spokesman for the **Latin American and Caribbean Group** (Panama) recalled the increased importance of FDI and the developing countries' experiences in this regard and noted the need to achieve the greatest international consensus in order to safeguard both the interests of developing countries and investors. In this regard, the Commission should promote further understanding of these issues. Attempts to regulate FDI should take into account that the FDI issue was inextricably linked with trade issues and intellectual property rights, and UNCTAD should therefore promote the study of these important areas. He also called for increased cooperation among international organizations on matters related to FDI and pointed to the example of the recent Global Investment Forum in this regard.

11. The spokesman for the **Asian Group and China** (Pakistan), said that countries were increasingly aware of the relationship between FDI and trade. In most countries, there was an effort to attract FDI with the objective of enhancing exports, supplementing domestic savings, developing infrastructure and catalysing technical progress. He emphasized, however, that while FDI could play a role in attaining these objectives, no simplistic conclusion should be drawn to the effect that all FDI was good for development. In particular, the Asian experience illustrated that careful regulation of FDI flows was necessary. Indeed, FDI could negatively impact the development process, for example through TNC entry that inhibited the growth of domestic firms, through the repatriation of capital that aggravated balance-of-payments difficulties, or through social and environmental effects that impeded further economic development. Furthermore, anticipated technology spill-overs might not materialize. At the same time, FDI remained narrowly distributed in a few developing countries: most countries that needed inflows of foreign capital and know-how did not have the capacity to attract FDI, and the international community was increasingly reluctant to assist their development efforts. In this context, the emphasis on liberalization should also raise questions of the development needs of host countries, especially as regards human resources and infrastructure, which were also required for attracting FDI. Measures should also be taken by home countries to encourage FDI outflows. In general, the impact of FDI on development would need further analytical study in order to provide a basis for policies to ensure that FDI contributed to development. In particular, the secretariat's work should focus on: (i) empirical studies on the effect of FDI on development as a whole; (ii) steps that could be taken by home countries to promote FDI; and (iii) studies on the impact of FDI liberalization measures on FDI flows and their consequent effects on trade and development.

12. The representative of **Ireland**, speaking for the **European Union**, pointed out that, although the last few years had seen an extraordinary increase in FDI flows to developing countries, there were still countries where FDI was excluded from certain sectors of the economy or where inflows were inhibited due to shortcomings in the political, economic and institutional environment and a legacy of distrust towards FDI. International assistance for efforts to attract FDI could only succeed when appropriate frameworks were in place in host

countries. Recalling the analysis of FDI/trade interlinkages provided in the *World Investment Report 1996*, he emphasized that the interrelationships between trade and FDI had to be taken into account in national and international policy formulation. The European Union favoured early progress towards a multilateral FDI instrument to be negotiated in WTO. At the same time, it welcomed the cooperation between WTO and UNCTAD on trade and FDI issues. As to UNCTAD's work, he called for action-oriented work aimed at assisting developing countries, especially LDCs, in their efforts to attract higher levels of FDI, including: (i) further analysis of trends and changes in FDI flows, with a particular focus on LDCs; (ii) study of experiences of LDCs that were beginning to attract higher FDI inflows; (iii) capacity-building in LDCs so as to improve their investment climate, including strengthening access to information and formulation of policies to attract and benefit from FDI; and (iv) facilitating exchange of experiences on investment promotion. This work could benefit from technical reports by experts on development aspects of existing regimes, as well as an analysis of policies needed to attract FDI. With regard to the work of ISAR, he called for work on accounting and reporting to be carried forward as part of the Commission's expert meetings.

13. The spokesman for the **African Group** (Morocco), said that African countries, in particular LDCs, had been left out of the growing globalization of the world economy. The impact of this was all the more severe because flows of official development assistance were at the same time stagnating or declining and indebtedness continued to be a heavy burden for many countries. However, as pointed out in several secretariat studies, FDI potential did exist in Africa. Efforts to realize this potential and to improve the situation would require the assistance of the international community, for example through home countries promoting outflows of FDI to Africa from the developed countries. UNCTAD could serve as a catalyst in this area, as it had shown in undertakings such as the Africa Connect conference. In addition, the global initiative for Africa of the Secretary-General of the United Nations would warrant UNCTAD being actively involved in the area of FDI for the region through a pilot project on FDI profiles for African countries. Other areas on which UNCTAD should focus included South-South cooperation and regional integration. With regard to a multilateral investment framework, UNCTAD should continue to help ensuring that all issues and developments related to such a framework were further explored and that the development dimension was at the centre of the work ahead, through the organization of studies, round tables and seminars, including at the regional level. Questions to be considered in this context included, for example, whether a multilateral agreement on investment was needed, what the advantages of such an agreement were as compared with existing arrangements, whether such an agreement was critical for increasing FDI flows to developing countries and especially to countries in Africa, whether such an agreement would involve special treatment for LDCs, and whether there would be special provisions to take care of specific priorities of developing countries.

14. The representative of the **Russian Federation** said that his country was creating an investment climate designed to stimulate FDI inflows and was also cooperating at the regional and international levels in this area. In this regard, UNCTAD's work on the publication of basic legal documents dealing with FDI was welcomed and should be continued. UNCTAD should also continue its analysis of FDI processes, especially as regards the impact of FDI on the transition economies. UNCTAD's experience in the area of FDI should also be used

to discuss the proposals for a multilateral investment agreement, in cooperation with other international organizations such as WTO and OECD.

15. The representative of **Senegal** referred to his country's liberalization experiences and noted that, as documented by the UNCTAD secretariat, they had not yet led to significant increases in FDI inflows into the country. That revealed a lack of interest of investors in Africa in general. UNCTAD should work to assist in overcoming this problem and in correcting the negative investment image of Africa.

16. The representative of **Japan** said that the role of FDI in international economic transactions had increased dramatically, and there was now widespread acceptance of FDI as a key instrument in promoting economic growth. At the same time, the existence of more than 1,000 bilateral investment treaties had created a complicated international framework that contributed to distortions of FDI flows. This called for a new, multilateral approach to FDI that would provide the predictability, consistency, transparency and stability required to expand investment flows, including to developing countries, and WTO should initiate work in this regard. For its part, UNCTAD should pursue its policy research and analysis, taking advantage of its well demonstrated expertise in this area. Research should focus on the development dimension of investment, including problems related to transfer of production technology and skills, balance-of-payments considerations and indigenous industries.

17. The representative of **Zambia** said that many least developed countries still lay outside the scope of the activities of transnational corporations, and he endorsed the idea that the secretariat produce investment guides for least developed countries that were objective, contained all the information useful for prospective investors, and showed that investment opportunities did, indeed, exist in least developed countries. He also called for further research on the effects of investment liberalization on development.

18. The representative of **Cuba** provided an overview of the regulatory framework for investment in Cuba and recalled that country's liberalization efforts. He also described the locational advantages of Cuba for foreign investors, advantages which had induced firms from several countries to invest in Cuba.

19. The representative of **Mexico** described Mexico's liberalization efforts intended to attract FDI that could contribute to the volume and quality of employment, transfer of technology and increased exports. He noted that the growth of FDI in developing countries had fallen short of the growth of FDI in general and emphasized the importance of joint efforts by the international community to expand FDI flows to developing countries, in particular LDCs.

20. The representative of **China** underscored the importance of focusing on the interlinkages between trade and investment which were of interest to many countries. He outlined China's reforms aimed at creating an enabling environment for foreign direct investment and pointed to the positive contributions that foreign investment had made to the economic growth of China in recent years.

China would continue to adjust and perfect its laws and regulations for FDI with a view to gradually providing the same treatment for local and foreign investors.

21. The representative of **Norway** commended UNCTAD's work in the investment area. With reference to future activities, he called for action-oriented work on the consensus areas spelt out in the Midrand final document, including the interlinkages between trade and investment, investment promotion in developing countries, and capacity-building in the least developed countries.

22. The representative of **Madagascar** called for the Commission to initiate the pilot seminar on the mobilization of the private sector to encourage FDI flows to least developed countries, in accordance with paragraph 89(g) of the "Partnership for Growth and Development", and appealed to donor countries to provide financial assistance for this endeavour. He also called for the implementation of the secretariat's proposal for the preparation of investment guides for all LDCs. As to the issue of a multilateral investment agreement, he recalled the Midrand mandate (para. 89 (b) of the "Partnership for Growth and Development"), noted the rising complementarity and synergy between UNCTAD's work in this area and that of WTO, and requested the secretariat to contribute in this area.

23. The representative of **Venezuela** highlighted her country's recent liberalization experience, especially in the area of petroleum exploitation and exploration. She also provided a brief overview of the legal framework for investment in the country.

24. The representative of **Bangladesh** recalled his country's liberalization experiences and noted that, despite the efforts made and the numerous incentives offered to investors, only limited FDI inflows had been attracted to the country. He also noted that, in a globalized world economy, the free flow of labour was as important as the free flow of capital, and this issue warranted further attention in UNCTAD's work. The secretariat should also provide guidance to LDCs on how to conduct themselves successfully in the market FDI market and should work with LDCs in the preparation of investment guides.

25. The representative of **Sri Lanka** pointed out that FDI produced not only benefits but also numerous costs that could be detrimental to development, such as, for example, possible deterioration of the terms of trade and the balance of payments. To ensure that these costs were minimized, Governments had to regulate entry of and conditions related to FDI. His delegation called for continued international assistance in the area of FDI, and such assistance should not be postponed until an "appropriate framework" existed.

26. The representative of **India** said that the uneven distribution of FDI flows called for further work on the determinants of FDI. In addition, the interrelationship between FDI and development was not always positive and the effects of FDI on development, including the negative effects, needed to be studied further. Governments established national policy frameworks for FDI and trade that had to take into account their development priorities, and any international attempt to develop a framework would also have to take those priorities into account and ensure a proper balance between countries' objectives and the rights of investors, something that would be difficult to achieve at the present time. The trend towards globalization and liberalization of factor

movements would gain further momentum in the future and would be as inexorable as the globalization and liberalization of trade in goods and services. A multilateral investment agreement was thus not necessary at this time.

27. Summarizing the discussions under item 3, the **Chief of the International Investment, Transnationals and Technology Branch of the Division on Investment, Technology and Enterprise Development** expressed the secretariat's appreciation to the Governments of the Netherlands and Norway for providing financial support to the secretariat's work on the *World Investment Report 1996* and to the Governments of Norway and Switzerland for financial support towards the Global Investment Forum. He noted the comprehensive nature of the discussion, which had underlined, among other things, the importance of FDI for development, both in its own right and in combination with trade; the worrisome fact that many countries received very little FDI; the role of home countries in stimulating FDI; the fact that FDI could also have negative effects; the need for proactive government policies; the need to improve the understanding of the multifaceted impact of FDI, particularly in the context of the liberalization of FDI flows, and the increasing recognition that FDI issues needed to be seen in a broader context, which included trade, competition policy, technology and intellectual property rights. He took note of the various proposals made by delegations concerning the themes for future analytical work, many of which revolved around the relationship between liberalization, FDI flows and development, as well as issues of specific relevance to development considerations in international investment agreements, with a view towards consensus-building. In concluding, he noted that, as suggested by delegations, future work would benefit from the involvement of civil society and close cooperation with other international organizations.

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

28. The first session of the Commission on Investment, Technology and Related Financial Issues was opened on 18 November 1996 by Mr. Rubens Ricupero, Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

29. At its 1st plenary meeting, on 18 November 1996, the Commission elected its Bureau as follows:

Chairperson:	Mrs. Lilia R. Bautista	(Philippines)
Vice-Chairmen:	Mr. Youri Afanassiev	(Russian Federation)
	Mr. U.S. Bhatia	(India)
	Mr. Fabien Edafe	(Madagascar)
	Mr. Javier Paulinich	(Peru)
	Mrs. J. Wright	(United Kingdom of Great Britain and Northern Ireland)
Rapporteur:	Mr. Atsuyuki Oike	(Japan)

C. Adoption of the agenda and organization of work

(Agenda item 2)

30. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/1. Accordingly, the agenda for the first session was as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Developments in international investment: interaction between investment and trade and its impact on development

4. Issues related to competition law of particular relevance to development

5. Reports requiring the attention of the Commission

6. Provisional agenda for the second session of the Commission and any necessary preparation through expert meetings

7. Other business

8. Adoption of the report of the Commission.

D. Provisional agenda for the second session of the Commission and any necessary preparation through expert meetings

(Agenda item 6)

[To be completed]

E. Adoption of the report of the Commission

(Agenda item 8)

[To be completed]

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DEVELOPMENTS IN INTERNATIONAL INVESTMENT: INTERACTION BETWEEN INVESTMENT AND TRADE AND ITS IMPACT ON DEVELOPMENT

ISSUES RELATED TO COMPETITION LAW OF PARTICULAR RELEVANCE TO DEVELOPMENT

Draft agreed conclusions

Focus of future work

1. The Commission encourages UNCTAD to continue to promote dialogue among development partners, including at the regional level.

2. The Commission recommends continued efforts by the secretariat to improve its collection of investment and related data, in cooperation with relevant international organizations and national governments, as well as the harmonization, standardization and dissemination of such data.

3. The Commission recognizes the need expressed by many developing countries, in particular LDCs, for empirical studies to shed further light on the impact on development of liberalizing domestic investment regimes.

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4. Noting that several countries have agreed to undertake investment policy reviews, as well as science, technology and innovation policy reviews, the Commission looks forward to receiving these reviews in order to familiarize other Governments and the international private sector with their results.

5. The Commission appreciates the utility and analytical quality of the World Investment Report.

6. The Commission invites contributions to support UNCTAD's programme with extrabudgetary resources, especially for technical assistance and for projects involving LDCs and countries in Africa, and expresses its appreciation to those countries that have already done so.

7. The Commission welcomes the work of the World Association of Investment Promotion Agencies (WAIPA) and calls for continued collaboration with WAIPA in promoting the exchange of experiences on investment promotion practices.

8. The Commission:

(a) Endorses the recommendations of the Expert Meeting on Competition Law and Policy;

(b) Takes note of the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) and takes no decision on the recommendations therein; and

(c) Takes note of the Chairperson's stated intention to request the President of the Trade and Development Board to undertake consultations to resolve the deadlock over the issue of expert-level activity.

9. The Commission agrees to convene:

(a) A meeting on competition law and policy, as called for in the report of the Expert Meeting on Competition Law and Policy;

(b) A meeting to examine and review existing agreements on investment, taking into account the interests of developing countries, and bearing in mind the work undertaken by other organizations, in pursuance of the mandate of paragraph 89 (b) of "A Partnership for Growth and Development" to identify and analyse implications for development of issues relevant to a possible multilateral framework on investment;

(c) A meeting on investment promotion and suggested measures in this respect that further development objectives.

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Agenda item 6

DRAFT PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE COMMISSION

Draft provisional agenda

1. Election of officers

2. Adoption of the agenda and organization of work

3. Recent developments in foreign direct investment trends and policies

4. Examining and reviewing existing agreements on investment to identify their implications for development, as called for in paragraph 89 (b) of "A Partnership for Growth and Development"

5. Reports of the subsidiary bodies of the Commission

6. Provisional agenda for the third session of the Commission

7. Other business

8. Adoption of the report.

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